SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

October Term, 1976

No. 76-439

THE PEOPLE OF THE TERRITORY OF GUAM,

Petitioners,

v.

EDMUND J. OLSEN,

Respondent.

BRIEF FOR RESPONDENT

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IN THE

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THE PEOPLE OF THE TERRITORY OF GUAM,

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EDMUND J. OLSEN,

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BRIEF FOR RESPONDENT

Respondent respectfully submits this brief in support of the decision of the United States Court of Appeals for the Ninth Circuit, and asks that the judgment below be affirmed. The decision of the Court of Appeals is reported at 540 F.2d 1011 (1976).

Question Presented

Whether section 22* of the Organic Act of Guam should be interpreted in an unprecedented way to authorize the Legislature of Guam to create a local court of last appeal

* Except as otherwise indicated, all references to section 22 of the Organic Act are to 48 U.S.C. section 1424.

and to transfer to it the appellate jurisdiction of the District Court of Guam, thereby denying the citizens of Guam appellate review of federal questions by Article III courts.

Statutes Involved

I. Section 22 of the Organic Act of Guam, Pub. L. No. 630, ch. 512, section 22, 64 Stat. 384 (1950), reads as follows:

> Sec. 22. (a) There is hereby created a court of record to be designated the "District Court of Guam", and the judicial authority of Guam shall be vested in the District Court of Guam and in such court or courts as may have been or may hereafter be established by the laws of Guam. The District Court of Guam shall have, in all causes arising under the laws of the United States, the jurisdiction of a district court of the United States as such court is defined in section 451 of title 28, United States Code, and shall have original jurisdiction in all other causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it, and shall have such appellate jurisdiction as the legislature may determine. The jurisdiction of and the procedure in the courts of Guam other than the District Court of Guam shall be prescribed by the laws of Guam.
>
> (b) The rules heretofore or hereafter promulgated and made effective by the Supreme Court of the United States pursuant to section 2072 of title 28, United States Code, in civil cases; section 2073 of title 28, United States Code, in admiralty cases; sections 3771 and 3772 of title 18, United States Code, in criminal cases; and section 30 of the Bankruptcy Act of July 1, 1898, as amended (title 11, U.S.C., sec 53), in bankruptcy cases; shall apply to the District Court of Guam and to appeals therefrom.

II. The subsequent amendments to section 22 are reflected in the language of 48 U.S.C. section 1424 (1970), the current codification of section 22:

> Section 1424. *District Court of Guam; jurisdiction; appellate division; rules of procedure.*
>
> (a) There is created a court of record to be designated the "District Court of Guam", and the judicial authority of Guam shall be vested in the District Court of Guam and in such court or courts as may have been or may hereafter be established by the laws of Guam. The District Court of Guam shall have the jurisdiction of a district court of the United States in all causes arising under the Constitution, treaties, and laws of the United States, regardless of the sum or value of the matter in controversy, shall have original jurisdiction in all other causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it, and shall have such appellate jurisdiction as the legislature may determine. The jurisdiction of and the procedure in the courts of Guam other than the District Court of Guam shall be prescribed by the laws of Guam.
>
> Appeals to the District Court of Guam shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The judge appointed for the court by the President shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges assigned to the court from time to time pursuant to section 1424b(a) of this title. The concurrence of two judges shall be necessary to any decision by the District Court of Guam on the merits of an appeal but the presiding judge alone may

make any appropriate orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

(b) The rules heretofore or hereafter promulgated and made effective by the Supreme Court of the United States pursuant to section 2072 of Title 28, in civil cases; section 2073 Title 28, in admiralty cases; sections 3771 and 3772 of Title 18, in criminal cases; and section 53 of Title 11, in bankruptcy cases; shall apply to the District Court of Guam and to appeals therefrom; except that no provisions of any such rules which authorize or require trial by jury or the prosecution of offenses by indictment by a grand jury instead of by information shall be applicable to the District Court of Guam unless and until made so applicable by laws enacted by the Legislature of Guam, and except further that the terms "attorney for the government" and "United States attorney", as used in the Federal Rules of Criminal Procedure, shall, when applicable to cases arising under the laws of Guam, mean the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein.

III. Section 23 of the Organic Act of Guam, Pub. L. No. 630, ch. 512, section 23, 64 Stat. 384 (1950), reads in relevant part as follows:

> Sec. 23. (a) The United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the District Court of Guam in all cases involving the Constitution, laws, or treaties of the United States or any authority exercised thereunder, in all habeas corpus proceedings, and in all other civil cases where the value in controversy exceeds $5,000, exclusive of interest and costs.

> (b) Any party may appeal to the Supreme Court of the United States from an interlocutory or final judgment, or order of the District Court of Guam, holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies or any officer or employee thereof, as such officer or employee, is a party.

IV. Section 23 was repealed in 1951 because certain amendments to certain sections of Title 28 of the United States Code had rendered it superfluous. Those sections reproduced here in relevant part, are:

> Section 1252. *Direct appeals from decisions invalidating Acts of Congress.*
>
> Any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States District Court for the District of the Canal Zone, the District Court of Guam and the District Court of the Virgin Islands and any court of record of Puerto Rico, holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party.
>
> Section 1291. *Final decisions of district courts.*
>
> The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

Section 1294. *Circuits in which decisions reviewable.*

Appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:

* * *

(4) From the District Court of Guam to the Court of Appeals for the Ninth Circuit.

Statement of the Case

Article IV, section 3 of the United States Constitution gives to Congress plenary power over the territories of the United States. Section 22 of the Organic Act of Guam, enacted in 1950 by the United States Congress pursuant to this authority, vested original and appellate jurisdiction in the District Court of Guam. The section authorized the Legislature of Guam to "transfer" the original jurisdiction of the District Court over causes not arising under the Constitution, treaties, and laws of the United States to local courts of its creation. The Act further provided that the District Court "shall have such appellate jurisdiction as the Legislature may determine." It did not authorize the "transfer" of the appellate jurisdiction to local courts.

In 1951, the First Session of the Legislature of Guam determined that the District Court's appellate jurisdiction should extend to broad categories of civil and criminal cases. Act of August 9, 1951, Pub. L. No. 17, section 1 (codified, Guam Code Civ. Proc. section 63 (1953) (First Guam Legislature). In 1974, however, the Legislature purported to eliminate the District Court's appellate jurisdiction entirely by creating a Supreme Court of Guam and transferring to that Court jurisdiction over all appeals

from the local Guamanian courts. Court Reorganization Act of 1974, Pub. L. No. 12-85 (Twelfth Guam Legislature).

Shortly thereafter, the plaintiff in a case before the local Guamanian court (the Superior Court of Guam) filed a notice of appeal from an order of that court to the Supreme Court of Guam, rather than to the District Court. *Dillingham Corp. of the Pacific* v. *Agana Bay Development Co. (Hong Kong) Ltd.*, Civ. No. 159-74 (July 19, 1974). The defendant in that case then petitioned the District Court for and was granted a writ of prohibition against the prosecution of the appeal in the Supreme Court of Guam. In granting this relief, the District Court declared void all sections of the Court Reorganization Act of 1974 which purported to divest the District Court of appellate jurisdiction on the ground that a transfer of appellate jurisdiction was beyond the power granted the Legislature by section 22 of the Organic Act of Guam. *Agana Bay Development Co. (Hong Kong) Ltd.* v. *Supreme Court of Guam*, 422 F. Supp. 593 (D. Guam 1974). The Court of Appeals for the Ninth Circuit reversed over the dissent of Judge Kennedy. 529 F.2d 952 (1976).

Respondent in the instant case was convicted of criminal charges in the Superior Court of Guam. On October 28 and 29, 1975, he filed notices of appeal respectively to the Supreme Court of Guam and to the District Court of Guam. His appeal to the District Court was dismissed by that Court for lack of jurisdiction on the authority of the majority opinion of the Court of Appeals in *Agana Bay*.

Appeal from this dismissal was heard by the Ninth Circuit Court of Appeals *en banc* which reversed and remanded, overruling the panel opinion in *Agana Bay*. The court concluded that the Organic Act did not authorize a

transfer of the appellate jurisdiction of the District Court. 540 F.2d 1011 (1976). The court further determined that:

> . . . the appellate jurisdiction of the district court may not be transferred without congressional authorization and pursuant to such provisions and safeguards as Congress may provide. *Id.* at 1017.

In reaching its conclusion, the court explicitly adopted the analysis of Judge Kennedy's dissent in *Agana Bay,* noting that it found:

> . . . particularly applicable to this case that portion of the *Agana Bay* dissent which points out that litigation in the territorial court may involve substantial federal questions which cannot be reviewed by the United States Supreme Court or by any other article III court under existing statutes. [Citation.] *Id.*

Petitioners filed a Petition for a Writ of Certiorari in this Court on September 22, 1976. The Writ was granted on November 15, 1976.

Summary of Argument

I

The language of section 22 of the Organic Act of Guam explicitly authorized the transfer of certain portions of the original jurisdiction of the District Court of Guam to local courts established by the Legislature of Guam. No such authorization was made with regard to any transfer of the District Court's appellate jurisdiction. Instead, the Act authorized the Legislature to "determine" the appellate jurisdiction of the District Court, that is, to determine in which cases appeals might be taken, not the court in which they could be heard.

This reading of section 22 is fully supported by the Act's legislative history. Prior to its passage of the Organic Act, Congress considered three separate bills. Each of these permanently vested appellate jurisdiction in the federal courts. Congress did not demonstrate the slightest intent to alter that usual arrangement when amending these bills. Moreover, subsequent enactments in 1951 and 1958 were consistent only with the view that Congress intended that the appellate power in Guam be vested in the District Court.

II

In providing civil governments for the territorial possessions of the United States, Congress has been careful to impose checks upon the exercise of judicial power by those governments. A review of the pertinent legislation discloses that the decisions of territorial courts are always subject to review by federal appellate courts. Petitioners assert that Congress intended to except the Guamanian judiciary alone from these traditional and universal restraints and authorized the Guam Legislature to remove all appellate jurisdiction over Guamanian cases from the District Court and other federal courts. That conclusion is unsupported and erroneous. Explicit language evidencing a Congressional intent to depart so radically from judicial norms is absent from the Act, and no reason exists for Congress to have singled out Guam for special treatment in this important respect.

III

An interpretation of section 22 that would permit the Legislature of Guam to insulate the local Guamanian courts from the federal appellate power would impose on Guamanians a burden borne by no other American citizens.

Guamanians alone would be denied access to federal review of local court decisions involving questions of federal law. A determination that Congress intended to permit such a burden to be imposed would raise serious questions as to the constitutionality of the Organic Act itself. Petitioners' interpretation of the Act should be rejected in favor of one consistent with the normal constitutional pattern requiring review by Article III courts of questions arising under federal law.

ARGUMENT

I

The Organic Act of Guam does not authorize the Legislature of Guam to transfer to an independent local court the appellate jurisdiction of the District Court of Guam.

The extent of the original and appellate jurisdiction of the District Court of Guam is set forth in a single sentence of section 22 of the Organic Act of Guam. As amended, this sentence provides that:

> The District Court of Guam shall have the jurisdiction of a district court of the United States in all causes arising under the Constitution, treaties, and laws of the United States, regardless of the sum or value of the matter in controversy, shall have original jurisdiction in all other causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it, and shall have such appellate jurisdiction as the legislature may determine. 48 U.S.C. section 1424 (1970).

The language of this sentence as well as the legislative history of section 22 and subsequent amendments thereto

makes clear that Congress did not accord the Legislature of Guam authority to transfer jurisdiction over appellate cases from the District Court to an independent tribunal such as the recently-created Supreme Court of Guam.

A. The Language of Section 22

The critical sentence of section 22 quoted above authorizes the legislature of Guam to "transfer" the *original* jurisdiction of the District Court to such courts as it may establish. No reference to any authority to "transfer" *appellate* jurisdiction is contained in that sentence. Rather, it provides that the District Court "shall have such appellate jurisdiction as the legislature may determine." As Congress expressly demonstrated in the immediately preceding clause of the sentence that it could explicitly provide authority to "transfer" the original jurisdiction of the District Court, it must be concluded that it did not intend to provide such authority with respect to its appellate jurisdiction. *See, F.T.C.* v. *Sun Oil Co.*, 371 U.S. 505, 514-15 (1963). The logical construction of the language providing that the appellate jurisdiction be "determined" by the Legislature of Guam is that the Legislature may determine the nature of causes from which appeals may be taken and the extent of such appeals.

Petitioners appear to propose in the first section of their Argument (Brief at pp. 8 *et seq.*) that this Court should ignore the difference in the language used in this sentence with respect to original and appellate jurisdiction and look only to the language of the first sentence of section 22, which provides that:

> ... [T]he judicial authority of Guam shall be vested in the District Court of Guam and in such court or courts

as may have been or may hereafter be established by the laws of Guam.

Petitioners assume that since this language does not explicitly deny appellate jurisdiction to any local courts that might be established, Congress must have meant for them to possess such jurisdiction. Even if the sentence stood alone, that conclusion would be questionable. But the sentence does not stand alone. It is immediately followed by another, which makes explicit provision for the exercise of jurisdiction. As we have seen, that latter sentence provides for the exercise of original jurisdiction both by the District Court and by the local courts, and provides for the exercise of appellate jurisdiction only by the District Court. Surely, if Congress had cared to authorize the Legislature to transfer appellate jurisdiction from the District Court, it would have done so in the explicit manner in which it authorized the transfer of original jurisdiction.

Moreover, any contrary interpretation could be in conflict with the United States Constitution, Article IV, section 3, which grants Congress plenary power over the territories of the United States. *Inter-Island Steam Navigation Co. Ltd.* v. *Hawaii,* 305 U. S. 306, 314 (1938); *Mormon Church* v. *United States,* 136 U.S. 1, 42-44 (1890). If this Court interprets statutory language describing the powers of territorial governments so as to permit the exercise by such governments of authority not explicitly granted by Congress, the courts will assume the role assigned to Congress. If, as Petitioners ask this Court to do, the courts can "find" power, *unless* that power was *explicitly withheld* by Congress, then the courts, not Congress, will determine how the territories are governed. Congress has been assigned

the duty of granting power to or withholding power from territorial governments; where Congress does not employ language explicitly granting power, the courts must assume that Congress chooses not to grant power. It must be concluded that Congress, in enacting section 22, expressly limited the jurisdiction of the local courts of Guam when it authorized the Legislature to transfer original, but not appellate, jurisdiction to them.

B. The Legislative History of Section 22

Even if the language of the statute itself did not make clear the Congress' intention to limit the authority of the Legislature of Guam over the appellate jurisdiction of the District Court, well established principles of statutory construction would require such a conclusion. It has long been recognized by this Court that general terms in a statute should not be broadly applied where such a construction would conflict with the purpose of the statute. As Mr. Justice Fields stated in *United States* v. *Kirby* (74 U.S. (7 Wall.) 482, 486-87 (1868)):

> All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence . . . The reason of the law in such cases should prevail over the letter.

This general tenet, integral to rational statutory interpretation, was used effectively by the Court in *Sorrells* v. *United States* (287 U.S. 435 (1932)), in which it read a defense of entrapment into the National Prohibition Act. *See id.* at 446 and cases cited therein. *See also* HART & SACKS, THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAK-

ING AND APPLICATION OF LAW (tent. ed. 1958) (approving use of the canon in *Sorrells*).

More recently, this Court invoked the doctrine in *United Housing Foundation, Inc.* v. *Forman* (421 U.S. 837 (1975)) in deciding the scope of the term "security" as used in the Securities Acts. As Justice Powell stated:

> [I]n construing these Acts against the background of their purpose, we are guided by a traditional canon of statutory construction:
>
> [A] thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. [Citation] 421 U.S. at 849. *See also, United States* v. *American Trucking Assns.*, 310 U.S. 534, 543 (1940).

The legislative history of the Organic Act makes clear that to interpret the language of section 22 authorizing the Legislature to "determine" appellate jurisdiction generally as a broad authorization to transfer appellate as well as original jurisdiction to local courts, would conflict with the spirit of the section as a whole and with the congressional intent in enacting it. The term must be construed narrowly to comport with the spirit of the entire statutory scheme and the intention of Congress as set forth in the legislative history of the section.

Consistent with the language of section 22, this history demonstrates that Congress never proposed or indeed considered authorizing the Legislature of Guam to transfer appellate jurisdiction from the District Court to local courts at the time the original Act was passed. The Organic Act,

as passed in 1950, provided for appellate review by the United States Supreme Court and by the Court of Appeals for the Ninth Circuit of certain decisions of the District Court of Guam. Organic Act of Guam, Pub. L. No. 630, ch. 512, section 23, 64 Stat. 384 (1950). No provision was made for federal appellate court review of the decisions of any other court of Guam. In claiming that section 22 allows the Legislature of Guam to transfer the power to review cases arising in the local courts from the District Court, Petitioners necessarily argue that Congress intended to permit the Legislature to deny litigants in local courts the possibility of access on appeal to the federal appellate courts, even in cases before the local courts which turn on questions of federal law. But the legislative history of the Act demonstrates that Congress never even considered giving the Legislature such power.

In the second session of the Eighty-first Congress, hearings were held and reported on three bills to provide civil government for Guam. All three provided access to federal appellate courts, at least for all cases raising questions involving the Constitution, treaties, and laws of the United States.

The first proposal was S. 185.* That bill would have established a District Court of Guam. District Court decisions were to be reviewed in the federal appellate courts as if the District Court were a United States District Court. The bill also provided that the Legislature could transfer District Court jurisdiction, except in cases arising under

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* S. 185, S. 1892, and the original version of H.R. 7273 are reproduced in *Civil Government for Guam, Hearing Before a Subcomm. of the Senate Comm. on Interior and Insular Affairs,* 81st Cong., 2d Sess. 1-25 (1950).

the laws of the United States, to a "Superior Court."* However, the very next sentence after this grant of power provided that appeals could be taken from the Superior Court in the same manner as from the District Court. That is, provision was made that Superior Court decisions could be reviewed by the federal appellate courts.

S. 1892 created a "Supreme Court of Guam" and provided explicitly for appeal from decisions of the Supreme Court to the federal District Court in Hawaii. Appeals could be taken from Supreme Court judgments:

(a) In cases arising under a statute or treaty of the United States;

(b) in all civil cases with a matter in controversy larger than $3,000, exclusive of interest and costs;

(c) in criminal prosecutions for offenses punishable by imprisonment for a term of more than one year; and

(d) in habeas corpus proceedings.

Decisions of the Hawaiian District Court were subject to further appellate review. In addition, litigants in a case in the local courts of Guam could remove the case to the Hawaiian district court in accordance with standard provisions for removal.

* Congress showed with this bill that it knew how to authorize a transfer of appellate jurisdiction in unmistakable fashion when it chose to authorize such a transfer at all. Section 21(a) of S. 185 specified the causes over which the District Court was to exercise jurisdiction, including "(7) all appeals from judgments rendered in the inferior courts." Section 19 established the Superior Court, and provided that the legislature might "transfer from the district court to such superior court jurisdiction over *any or all* causes other than those arising under the laws of the United States." [Emphasis supplied.]

H.R. 7273 (which as amended became the Organic Act of Guam) in its original version also established a "Supreme Court of Guam." The bill provided for direct review in the Court of Appeals for the Ninth Circuit of all final decisions of the Supreme Court of Guam:

(a) in cases involving the Constitution, laws, or treaties of the United States or any authority exercised thereunder;

(b) in habeas corpus proceedings; and

(c) in other civil cases where the value in controversy exceeded $5,000, exclusive of interest and costs. Litigants in the local courts were empowered to remove to the District Court for the Northern District of California under the usual circumstances.

In other words, all of the bills considered by Congress prior to the passage of the Organic Act provided for review in federal appellate courts of decisions of the highest court of Guam in every case involving a question of federal law.*

The history of the amendments reveals no desire on the part of Congress to depart from this well-established pattern for federal appellate review. According to the Senate Committee Report on H.R. 7273, the purpose of the Committee amendment to section 22 of that bill was to replace the Supreme Court of Guam as originally proposed with a separate federal District Court in Guam which, it was believed, would promote the development of American busi-

* With the minor exception of S. 1892, which did not authorize appeal to the District Court of Hawaii in civil cases involving, but not arising under, federal law when the amount in controversy was under $3,000, and in criminal cases when the maximum sentence was one year or less. These *de minimis* limitations embody an incidental restriction of the sort often placed on district court jurisdiction.

nesses in the Far East more readily than the Hawaiian District Court or the District Court for Northern California. As the Senate Report explained:

> Another section to which the Senate committee devoted considerable time and thought was that concerning the establishment of a court system on Guam.
>
> Given a period of peace, the growth of Guam as a transportation and commercial center for American interests in the Far East seems almost a foregone conclusion. American business enterprise in the area will want, and need, a center in which it can have the full protection of American laws and legal procedure.
>
> Formerly this need was supplied by the United States Court for China, which had its headquarters in Shanghai, but that court was abolished by the treaty with China ending extraterritoriality. The nearest American court to far eastern economic centers is that in Hawaii, which is 12 or more hours away from Guam by air. If Guam is to afford American business enterprise the protection and stability needed, a court in Guam which will have on-the-spot jurisdiction in matters involving admiralty and business reorganization is clearly indicated. S. Rep. No. 2109, 81st Cong., 2d Sess. 4 (1950).

While the establishment of a District Court for Guam seemed desirable, there would not have been enough federal business in Guam to occupy fully the time of a District Court judge. That, apparently, was the reason for the elimination, at the time of the amendment, of all earlier references to a "Supreme Court" in Guam; the cases which Congress had intended that the Supreme Court should hear would instead be dealt with by the judge of the District Court. The replacement of the Supreme Court with the District Court led, of course, to elimination of the provi-

sions of the bill which explicitly provided for federal court review of decisions of the Supreme Court of Guam.

The final language of the present section 22 resulted from an amendment suggested by Judge Albert B. Maris (who was the judicial advisor to Guam) and the Administrative Office of the United States for reasons having no relevance to the issue of appellate jurisdiction. As is indicated in the following paragraph from Judge Maris' letter of July 6, 1950 to Senator Joseph O'Mahoney which contained the language of the present statute, he was concerned with the designation of the District Court as a "federal" court and possible limitations on its original jurisdiction over local matters:

> Turning to proposed section 22(a) of the bill I note that the District Court of Guam is described as a "United States district court." I question whether this is an appropriate description since the court is not being created under the judiciary article of the Constitution, article III, section 1, but rather under article IV, section 3, which gives Congress power to regulate the territory of the United States. Moreover, if, as seems to me inevitable, the major business of the court will be to consider and dispose of local cases the designation is hardly apt. Furthermore, I suggest that the sounder legislative approach to the jurisdictional questions involved in this section would be to confer upon the district court original jurisdiction in all Federal causes and in all other causes in Guam except as such as the legislature may assign to other courts. I would, therefore, suggest that section 22(a) read as follows: [the language of the present law]. S. Rep. No. 2109, 81st Cong., 2d Sess. 12 (1950).

There is nothing either in this letter or elsewhere in the legislative history to indicate that Congress, in adopting

this amendment, even considered the issue of a transfer of appellate jurisdiction from the District Court to courts established by the Legislature of Guam. Rather the amendment was intended to make clear the broad original jurisdiction of the District Court over local as well as federal cases. That appeals should be available from local courts to the federal appellate courts, at least in cases involving questions of federal law, was assumed by Congress throughout its deliberations on the various proposals to establish court systems in Guam. And there is nothing in the legislative history to suggest that Congress ever departed from this original assumption.

C. Subsequent Amendments to the Organic Act

Further support for the conclusion that Congress intended that appeals from the local Guamanian courts be heard in the District Court is found in the 1951 and 1958 amendments to the Organic Act.

As passed in 1950, section 23 of the Organic Act authorized appeals from final decisions of the District Court of Guam to the Court of Appeals for the Ninth Circuit:

(a) in all cases involving the Constitution, laws, or treaties of the United States or any authority exercised thereunder;

(b) in all habeas corpus proceedings; and

(c) in all other civil cases where the value in controversy exceeded $5,000, exclusive of interest and costs. The Act also provided for direct appeals from the District Court to the United States Supreme Court in a limited class of cases.

In the very next session of Congress, amendments to 28 U.S.C. sections 1291 and 1292 strengthened the link between the District Court of Guam and the Court of Appeals for the Ninth Circuit. The new language in section 1291 replaced that portion of section 23 authorizing appeals to the Court of Appeals. Power of review was extended to judgments of the District Court in a group of local cases (criminal cases raising only issues of local law and civil cases raising only issues of local law with a value in controversy of less than $5,000) that could not previously have been taken from the District Court to the Court of Appeals. Act of October 31, 1951, Pub. L. No. 248, ch. 655, section 48, 65 Stat. 710. It is impossible to reconcile this amendment with Petitioners' contention that Congress was not concerned about whether cases in the Guam courts could be reviewed in federal appellate courts. *See* S. Rep. No. 1020, 82d Cong., 1st Sess. 15-16 (1951). At the same time, section 1292 was amended to permit review by the Court of Appeals of certain interlocutory orders of the District Court. Act of October 31, 1951, ch. 655, section 49, 65 Stat. 710. The District Court of Guam had been the only territorial District Court not included in 28 U.S.C. section 1292; Congress felt that there was no reason for the relationship between the territorial court of Guam and the Court of Appeals to be different in this respect from that between the District Court of Hawaii and the Court of Appeals. S. Rep. No. 1020, 82d Cong., 1st Sess. 16(1951).

Section 22 of the Organic Act was further amended in 1958 (Act of June 4, 1958, Pub. L. No. 85-444, 72 Stat. 178) to provide that appeals brought in the District Court be heard and determined by an appellate division of that court consisting of three judges. Congress thus sanctioned the

arrangements for the exercise of the appellate jurisdiction of the District Court which had been made previously by the Legislature of Guam and explicitly incorporated the existing Appellate Division as an integral part of the judicial system of Guam. *See Agana Bay Development Co. (Hong Kong) Ltd.* v. *Supreme Court of Guam,* 529 F.2d 952, 960 (9th Cir. 1976) (Kennedy, J., *dissenting*).

This amendment did not (despite the lengthy contentions of Petitioners' Brief at pp. 19-23) repeal authority given to the Guam Legislature by the original Organic Act, to transfer appellate jurisdiction from the District Court. To the contrary, such authority was never granted by the original Act. The amendment does indicate that in 1958 it still had not occurred to Congress that appellate jurisdiction could be exercised by any court of Guam other than the District Court. The amendment does not in any sense admit of the possibility that a local appellate court might someday replace the Appellate Division; nor does the amendment establish an Appellate Division "until such time as the Legislature of Guam shall see fit to abolish it." The Appellate Division is made a division of the District Court, a part of the Guam judiciary as defined by the Organic Act of Guam. Petitioners' interpretation of section 22 of that Act as containing an implied authorization for the Legislature of Guam to transfer all appellate jurisdiction from the District Court would authorize the Legislature to destroy the Appellate Division provided for by Congress in this amendment and would thereby render nugatory the entire second paragraph of that same section 22.

A far more appropriate conclusion is that Congress intended in 1950, in 1951, and in 1958, that jurisdiction over

appeals from the local courts of Guam should be vested in the District Court and specifically in an Appellate Division of that court. The system created in 1950, and strengthened by subsequent amendments, was a system in which the District Court's appellate jurisdiction, the one link between the local courts and federal appellate tribunals, was to remain in the District Court and was not to be transferred to local courts. It is not for the Legislature of Guam to repeal this consistent statutory structure created by Congress.

II

In establishing exclusive appellate jurisdiction in the District Court of Guam, Congress was guided by the same principles which have governed the creation of the judicial systems of the other territories of the United States.

Petitioners' position, if accepted by this Court, would create a radical departure from accepted patterns of U.S. territorial government, and a unique system of governance for the Territory of Guam. There is no basis in history or logic for this position. To the contrary, the evidence is overwhelming that Congress intended that Guam be a part of our one federal judicial system, along with the States and the other territories of the United States.

Political, economic, and social conditions in the territories vary widely. It is therefore hardly surprising that the local governments of all the territories have not been struck from a single mold, or that the territories are not bound to the United States under identical arrangements. However, while many of the characteristics of the territo-

rial governments have been shaped by varying local conditions, Congress has seen fit to impose a consistent system of constitutional control on the local judiciary in all territories for which local judiciaries have been established. That such control should be imposed in all cases is hardly surprising. Courts in the territories, like local courts in the States of the Union, decide questions of federal law, either pursuant to concurrent jurisdiction over cases arising under federal law or because federal questions are often involved in cases which arise under laws of local application. To permit the courts of the territories to decide such questions with no opportunity for review by the federal judiciary would in effect grant to a territorial judiciary powers beyond those of the several States.

Statutory control over the territorial judiciaries has taken two forms. The first—by virtue of the power to appoint, remove, and compensate judicial officials—ensures that judicial officers implement and enforce the laws of the United States. The second is the power invested in federal appellate courts to review local court decisions. An examination of judicial arrangements in jurisdictions that are or were recently territories confirm this consistent pattern.

A. Hawaii

While Hawaii is, of course, no longer a territory, the restrictions exercised over Hawaii's judicial power before Hawaii became a state are instructive. Under the provisions of section 81 of the Act of April 30, 1900, ch. 339, 31 Stat. 141, the judicial power of the Territory of Hawaii was vested in one Supreme Court, in circuit courts, and in other courts of inferior jurisdiction. The three members

of the Supreme Court and the judges of the circuit courts were appointed for four-year terms by the President of the United States, by and with the advice and consent of the Senate. *Id.*, sections 80 and 82. Those judges were subject to removal by the President (*Id.*, sections 80 and 82) and were paid by the United States. *Id.*, section 92.

Section 86 of the Act created a District Court. The District Court consisted of one judge, appointed to a six-year term by the President by and with the advice and consent of the Senate. The district judge was also subject to removal by the President. *Id.*, section 86. His salary was paid by the United States. *Id.*, section 92.

Section 86 of the Act also provided that appeals from the District Court should be taken to the Court of Appeals for the Ninth Circuit. Appeals and removal of causes from the courts of the Territory of Hawaii to the courts of the United States were governed by the laws relating to such matters as between the courts of the States and those of the United States.

In the years between 1900 and the admission of Hawaii into the Union, a number of the provisions outlined above were amended. Most notably, the power to review judgments of the Supreme Court of Hawaii, originally vested in the United States Supreme Court by section 86 of the Act of April 30, 1900, and by the Act of March 3, 1911, Pub. L. No. 475, ch. 231, section 246, 36 Stat. 1087, as if the Supreme Court of Hawaii had been the highest court of a

state, was transferred to the Court of Appeals for the Ninth Circuit. Act of February 13, 1925, Pub. L. No. 415, ch. 229, sections 1, 13, 43 Stat. 936. But power to appoint judges (for limited terms) to the Supreme Court, the circuit courts, and the District Court remained with the President, as did the power of removal. Further, at all times, all final decisions of the Supreme Court and of the District Court involving the laws of the United States (and some other decisions) were reviewable in the United States Supreme Court or in the United States Court of Appeals for the Ninth Circuit.

B. Alaska

Unlike the Territory of Hawaii, the Territory of Alaska was not given separate local and federal courts. Instead, the Act of June 6, 1900, ch. 786, section 4, 31 Stat. 321 established a District Court in Alaska as a court of general jurisdiction. The judges of the District Court were appointed by the President by and with the advice and consent of the Senate for a term of four years, unless sooner removed by the President for cause. Act of June 6, 1900, section 10. Salaries were payable from the Treasury of the United States. *Id.*

The Act also provided that, in a limited class of cases, final judgments of the District Court could be appealed directly to the United States Supreme Court. *Id.*, section 504. Virtually all other final judgments, as well as certain interlocutory orders of the District Court, were made reviewable in the Circuit Court of Appeals for the Ninth Circuit. *Id.*, sections 504, 507.

While some amendments were made to the law governing the judicial power in Alaska prior to Alaska's admission into the Union, the major features of the judicial system, including the right of appeal of judgments to an Article III court, did not change.

C. Puerto Rico

Shortly after the United States took control of Puerto Rico, Congress passed "An Act Temporarily to provide revenues and a civil government for Puerto Rico." Act of April 12, 1900, ch. 191, 31 Stat. 77. Section 33 of the Act vested the judicial power of Puerto Rico in the courts then operating on the island, but provided that the justices of the Supreme Court of Puerto Rico be appointed by the President, by and with the advice and consent of the Senate.

The Act also created a "district court of the United States for Puerto Rico." The district judge was appointed in the same way as were the justices, for a four-year term unless sooner removed by the President. *Id.*, section 34. His salary and the salaries of the justices were set in section 36.

Relations between the District Court and the local courts of Puerto Rico were governed by the rules which applied to relations between the courts of the United States and the courts of the States. *Id.*, section 34. Appeals from both the Supreme Court and the District Court could be taken to the United States Supreme Court in all cases in which it was alleged that a right claimed under the Constitution, treaties or laws of the United States had been denied. *Id.*, section 35.

Amendments to this system were made prior to the time Puerto Rico became a commonwealth. For example, the Act of January 28, 1915, Pub. L. No. 241, ch. 22, section 2, 38 Stat. 803, and the Act of March 2, 1917, Pub. L. No. 368, ch. 145, section 42, 39 Stat. 951, made the District Court a part of the First Circuit. The rules governing appeals from judgments of the United States District Courts to the Courts of Appeals and to the United States Supreme Court were made applicable to appeals from the District Court for Puerto Rico. Act of March 2, 1917, section 42. Appeals from the Supreme Court of Puerto Rico were also transferred to the Circuit Court of Appeals for the First Circuit. *Id.*, section 43. The basic structure of the court system remained unchanged.

When the Constitution of the Commonwealth of Puerto Rico took effect, the law establishing the courts of Puerto Rico was repealed. Act of July 3, 1950, Pub. L. No. 600, ch. 446, section 5, 64 Stat. 319. Article V of the Puerto Rican Constitution provides for local control of the appointment and payment of the Puerto Rican judiciary. But final judgments of the Supreme Court of Puerto Rico can still be reviewed in the United States Supreme Court under 28 U.S.C. section 1258 (1970); *see* 7B Moore's Federal Practice, section 1258 (2d ed. 1976).

The judges of the District Court in Puerto Rico now hold office during good behavior. 28 U.S.C. sections 119, 133, and 134 (1970). However, their decisions are still subject to review by the First Circuit Court of Appeals. 28 U.S.C. sections 41, 1291 and 1292 (1970).

D. Canal Zone

The judicial system of the Canal Zone is governed by Title 3 of the Canal Zone Code, Pub. L. No. 87-845, 76A Stat. 51 (1962). Chapter 1 of Title 3 creates the United States District Court for the District of the Canal Zone. The judge for the district is appointed by the President, by and with the advice and consent of the Senate, for a term of eight years unless sooner removed by the President for cause. He receives the salary of a judge of the United States District Court.

As in the case of the Territory of Alaska, in the Canal Zone no separate court system was created for local cases. The District Court has jurisdiction over most of these. Canal Zone Code, title 3, section 141. Magistrates' courts are given jurisdiction over minor matters, but the magistrates are chosen by the President or his designee, and the District Court reviews decisions of the magistrates. *Id.*, sections 82, 141(3), and 171.

All final decisions and certain interlocutory decisions of the District Court in the Canal Zone can be reviewed by the Court of Appeals for the Fifth Circuit, except where direct review can be had in the United States Supreme Court. 28 U.S.C. sections 1291, 1292, and 1294 (1970).

These features of the judicial system for the Canal Zone are substantially those provided by the Act of August 24, 1912, Pub. L. No. 337, ch. 390, sections 8-9, 37 Stat. 560.

E. Virgin Islands

Shortly after the United States purchased the Virgin Islands from Denmark, Congress passed "An act to provide a temporary government" for those Islands. Act of March

3, 1917, Pub. L. No. 389, ch. 171, section 2, 39 Stat. 1132. Section 2 of the Act stipulated that until Congress should otherwise provide, all cases previously reviewable in the courts of Denmark should thereafter be appealed to the Circuit Court of Appeals for the Third Circuit. *See Clen* v. *Jorgensen,* 265 Fed. 120 (3d Cir. 1920). The Act of February 13, 1925, Pub. L. No. 415, ch. 229, section 1, 43 Stat. 936, amended the Judicial Code of the United States to provide that appeals from final decisions of the courts of the Virgin Islands would be available in all cases involving the Constitution, statutes or treaties of the United States, and in certain other cases.

In 1936, Congress passed the Act of June 22, 1936, Pub. L. No. 749, ch. 699, 49 Stat. 1807 (1936). Section 25 of the Act vested the judicial power of the territory in the District Court for the Virgin Islands and in such courts of inferior jurisdiction as might be established by local law.* The District Court was granted broad original jurisdiction in federal and local cases, and, as well, jurisdiction over all appeals from judgments of inferior courts of the Islands. Act of June 22, 1936, sections 28 and 32.

Section 26 of the Act provided that the judge for the District Court would be appointed by the President, by and with the advice and consent of the Senate, for a four-year term unless sooner removed by the President for cause.

* Petitioners argue (at pages 8 to 15 of their Brief) that the scope of the original jurisdiction granted to the local court of Guam in section 22 is greater than the scope of the original jurisdiction which may be exercised by the local courts of the Virgin Islands. From this they conclude that Congress must have intended that the local courts of Guam exercise appellate jurisdiction, which the local courts of the Virgin Islands do not. Respondent does not quarrel with the statement regarding the jurisdiction of the lower courts, but submits the Petitioners' conclusion as to appellate jurisdiction simply does not follow.

His salary was to be paid by the United States Department of Justice. *Id.,* section 26. The procedure for appeals from the District Court remained unchanged. *Id.,* section 30.

In other words, Congress provided the Virgin Islands with a unitary judicial system like those of Alaska and the Canal Zone, but unlike those of Hawaii and Puerto Rico. That is, the District Court rather than a federal appellate court had immediate jurisdiction over appeals from cases heard in other territorial courts.

A proviso to section 25 of the Act deserves attention. That proviso authorized the legislative assembly to transfer from the District Court to a "Superior Court" jurisdiction over "any or all" cases except those arising under the laws of the United States. But Congress followed this grant of power immediately, as in the proposed S. 185 (81st Cong., 1st Sess. (1949)) concerning Guam (discussed in Part IB of this Brief), with a statement that any cases heard by the Superior Court should be appealed in the manner authorized for appeals from the District Court. Authority to create a Superior Court was withdrawn by the Act of July 22, 1954, Pub. L. No. 517, ch. 558, sections 21-22, 68 Stat. 497.

The judicial system for the Virgin Islands otherwise remains today substantially as provided for by the 1936 Act. *See* 28 U.S.C. sections 1252, 1291, 1292, and 1294; 48 U.S.C. sections 1611-14 (1970). Indeed, even the recent grant to the people of the Virgin Islands of the authority to adopt a constitution for local self-government requires that a system of local courts be provided which is

consistent with the provisions of currently applicable law. Act of October 21, 1976, Pub. L. No. 94-584, section 2(b)(6), 90 Stat. 2899. Under the currently applicable law, the legislature may determine which local cases are serious enough to be reviewed in the District Court. 48 U.S.C. section 1612 (1970). But the legislature may not create a rival appellate court and thereby cut off the federal appellate power.

F. Northern Mariana Islands

On March 24, 1976, Congress approved a Covenant "to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" and for other purposes. Pub. L. No. 94-241, 90 Stat. 263. Under the terms of the Covenant, not all of which have yet taken effect, the United States will exercise sovereignty over the Northern Mariana Islands.

Section 401 of the Covenant provides for the establishment of a District Court for the Northern Mariana Islands. The court is vested with the jurisdiction of a United States District Court, but without any requirement that a minimum sum be in controversy (Covenant at section 402(a)) as well as with original jurisdiction over all other cases jurisdiction over which is not vested in local courts by the laws of the Islands. Covenant at section 402(b). Further, the court is granted "such appellate jurisdiction as the Constitution or laws of the Northern Mariana Islands may provide." Covenant at section 402(c).

Unlike the Organic Act of Guam, the Covenant unmistakably indicates that appellate jurisdiction may be vested in a local court rather than in the District Court. Section

403 of the Covenant provides that the usual rules relative to appeals, certiorari, removal and other procedures shall apply to the relations between the courts of the United States and those of the Northern Mariana Islands. But the section then excepts from this rule appeals from the final decisions of the "Appellate Court for the Northern Mariana Islands." Appeals from that court are to be heard by the Court of Appeals for the Ninth Circuit, rather than by the United States Supreme Court, for the first fifteen years after the Appellate Court is established unless those appeals can be taken to the District Court.

Sections 402 and 403 thus provide that the legislature of the Northern Mariana Islands may create an appellate court, decisions of which are not subject to review by the District Court but which are subject to review in the federal appellate courts. Petitioners suggest in Point VI of their Argument that much of the language in section 402 dealing with local legislative control of the appellate jurisdiction of the District Court is similar to the language of section 22 of the Organic Act of Guam. From this they conclude that the legislature of Guam must, under section 22, have authority to create an appellate court, decisions of which are not subject to review by the District Court (or by any federal court).

In effect, Petitioners' claim is that language employed by Congress in 1950 must be assumed to have the exact meaning of similar, but not identical, words used by a different Congress twenty-five years later in a statute containing other substantially different provisions. That assumption is incorrect. It is only in the context of section 403, which provides for review of local judgments in federal

appellate courts, that the language of section 402 can be read to empower the legislature of the Northern Mariana Islands to transfer appellate jurisdiction from the District Court.

No provision corresponding to section 403 was made a part of the Organic Act of Guam. The words of section 22, coming as they do in a very different context, reasonably require an interpretation different from that of the words of the Northern Mariana Islands' Covenant. Even though section 402 of the Covenant allows transfer of District Court appellate jurisdiction to local courts, federal appellate courts can, by reason of section 403, still review decisions of the courts of the Islands; the traditional control over the territorial judiciary is present. To interpret the Organic Act of Guam, which has no section equivalent to section 403, in the same way would be to destroy the accepted structure.

G. Other U. S. Territories

The broad plan for controlling the territorial courts reflected in the legislation governing the various territories is not of recent design. One need only look to the provisions of the Revised Statutes of the United States governing the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, Wyoming, and Washington to learn that the same principles were applied by Congress in the nineteenth century. The Supreme Court in each of these territories consisted of three justices appointed by the President, by and with the advice and consent of the Senate, for four-year terms. R.S. sections 1864, 1877, 1907, and 1908 (1875). The judges' salaries were set by Congress and paid by the United States. R.S. sections 1879 and 1882 (1875).

The Supreme Court in each territory could hear appeals from all final decisions of the District Courts below under regulations prescribed by law. R.S. sections 1869, 1910 and 1911 (1875). Appeals from the territorial Supreme Courts (except that of Washington) to the United States Supreme Court could be brought in any case in which the sum in controversy exceeded $1,000. R.S. section 1909 (1875). In the Territory of Washington, any case presenting a federal question or in which the sum in controversy was greater than $2,000 could be appealed. R.S. section 1911 (1875). Decisions of the territorial Supreme Courts or the District Courts upon writs of habeas corpus involving personal freedom could also be appealed to the United States Supreme Court. R.S. section 1909 (1875).*

What emerges from this review of the relevant law of current and former territories with Congressionally-established judiciaries is a clear pattern of Congressional concern that all territorial judiciaries be subject to certain significant federal checks. Judges of the important local courts have traditionally been appointed by the President and confirmed by the Senate. They have usually been subject to removal by the President, and in any event generally serve for short terms. And—most pertinent here—decisions of the local courts, at least in cases involving questions of federal law, have been subject to review in federal appellate courts.

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* Petitioners suggest with a reference to *American Insurance Co.* v. *356 Bales of Cotton* (26 U.S. (1 Pet.) 511 (1828)), a case nearly 150 years old, that in the territory of Florida a different relationship between federal and local courts may have existed. On the contrary, *American Insurance Co.* says nothing about whether the power of appellate review can be taken from the federal courts. That case merely held that the Superior Court of the Territory of Florida had not been given exclusive original jurisdiction in admiralty cases.

The three proposed Organic Acts of Guam on which hearings were held in the Eighty-first Congress, Second Session, fit into this long-established pattern. As mentioned in Part IB of this Brief, S. 185, S. 1892, and the original version of H.R. 7273, all provided for review by federal courts of decisions of the highest court in Guam in cases involving federal law. S. 1892 and the original H.R. 7273 provided as well for Presidential appointment of judges of the highest court.

The recent statute authorizing the voters of Guam (and the voters of the Virgin Islands) to adopt a constitution for local self-government demonstrates that Congress is still concerned that nothing destroy the link between the courts of Guam and the federal appellate courts.* The section which authorizes a constitutional provision establishing a system of local courts stipulates that the provision will not take effect until Congress enacts legislation regulating the relationship between the local courts and the federal court system.** Act of October 21, 1976, Pub. L. No. 94-584, section 2(b)(7), 90 Stat. 2899.

* The statute, which was passed almost contemporaneously with the grant of *certiorari* in this case, also makes it doubtful that the issue here presented remains, in the words of the Petition for *certiorari* (at p. 12), an issue "of great significance in determining the degree of self-government permitted to the Territory of Guam."

** The comments of the Department of the Interior's Director of Territorial Affairs on early versions of the bill which did not contain this stipulation are instructive. The Department was concerned that the original bills might "give the government of the Virgin Islands or Guam the power to . . . establish a judicial system without review by the U. S. Supreme Court. . . ." *Constitution for the Virgin Islands and Constitution for Guam: Hearing before the Subcomm. on Territorial and Insular Affairs of the House Comm. on Interior and Insular Affairs*, 94th Cong., 1st Sess. 18 (1975) (Statement of Fred M. Zeder).

Against this background, the interpretation of the Organic Act of Guam advanced by Petitioners is insupportable. It is inconceivable that Congress meant to permit Guam and Guam alone to establish a territorial court that was composed of judges not appointed by the President whose decisions on federal questions could not be reviewed in the federal courts. No explanation has been advanced as to why Guam alone should be so treated.

Surely it cannot be assumed that Congress meant to break drastically from the pattern of constitutional control of the judiciary established in every other territory, particularly where the language of the statute is easily susceptible to an alternative interpretation that is consistent with the traditional scheme.

III

Petitioners' interpretation of the Organic Act would render that Act unconstitutional and should therefore be avoided.

As discussed in Point II of this Brief, Petitioners' interpretation of section 22 would place Guam in a uniquely independent position among American territories. It would deprive Guamanians—alone—of the ability to obtain judicial review by courts authorized under Article III of the Constitution. Just as Congress has consistently maintained American control and supervision over territorial courts, it has also ensured that individual territorial litigants be afforded the opportunity for review in constitutionally created courts.

It has been clear since *Martin* v. *Hunter's Lessee* (14 U.S. (1 Wheat.) 304 (1816)) that the decisions of local courts were intended by the framers of the U. S. Constitution to be subject to Article III judicial review. There would thus be immediate constitutional problems if Guam were authorized to deny such review to its citizens. *See generally,* Hart, *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic,* 66 HARV. L. REV. 1362 (1953). To avoid the constitutional ramifications of Petitioners' approach, the Court should not strain the language of the Organic Act to find that Congress meant to permit Guam's citizens to be singled out from all other Americans in this extraordinary way.

In this context, the remarks of Representative Philip Burton, Chairman of the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs, on the recent Act authorizing the voters of Guam and the Virgin Islands to establish constitutions for local self-government (Act of October 21, 1976, Pub. L. No. 94-584, 90 Stat. 2899) are noteworthy:

> It's self-evident that the bill of rights will be respected and appeals to the Federal courts as for any other American wishing to appeal to the Federal court [*sic*]. There is no way that a local home rule thing can abrogate that constitutional right of the American people. No way on Earth. And there is no suggestions [*sic*] from any quarter that it would be done. *Constitution for the Virgin Islands and Constitution for Guam: Hearing before the Subcomm. on Territorial and Insular Affairs of the House Comm. on Interior and Insular Affairs,* 94th Cong., 1st Sess. 22 (1975).

In light of this unqualified pattern, it would be extraordinary to infer that in 1950, when Guam was given a civilian government by Congress as a first step in the development process, it gave to the Legislature of Guam the power to create an appellate court system completely insulated from review by an Article III or any other federal court. Congress has never given such power to any territory, and, of course, it is enjoyed by no State in the United States.

Judge Kennedy, dissenting in the original panel decision in *Agana Bay* (529 F.2d at 958-61) showed a sensitive concern for the right of Guamanian litigants as United States citizens to receive review in Article III courts:

> Prior to 1974, virtually all significant matters were within either the original or appellate jurisdiction of the district court, and reviewable by this court and the United States Supreme Court. Under the new system, only cases "arising under" federal law or involving the territorial income tax remain within federal court jurisdiction [*see* Guam's Court Reorganization Act, Pub. L. No. 12-85, section 5]. As to other matters there is no appeal beyond the Supreme Court of Guam. Important federal issues can be presented in cases which do not "arise under" federal law. . . . It seems unlikely to me that Congress intended to confer on the territorial legislature the power to eliminate review in the federal court system of all claims raised in the territorial courts. . . . 529 F.2d at 960.

Judge Kennedy went on to point out that under Petitioners' asserted interpretation, it would be possible for the Legislature of Guam to grant even original federal question jurisdiction to Guam's Superior Court, which would effectively bar Article III review of even those cases, since removal to the District Court of Guam would not be available

under 28 U.S.C. section 1441 (1970). *See* 529 F.2d at 960-61, n.3. The *en banc* opinion of the Ninth Circuit in the instant case quite correctly paid heed to Judge Kennedy's reasoning. 540 F.2d 1011, 1012 (9th Cir. 1976). It would no doubt have astounded the 81st Congress to be told that this Court would be asked to decide, on the basis of the language of section 22 of the Organic Act, that Congress had determined that Guam should have a court system totally isolated from the federal courts. Such an interpretation would be inconsistent with the historical theme of federal territorial supervision and congressional assurances of Article III review of decisions of the territorial courts.

The recent congressional action relating to Guam underscores and clarifies this analysis. As discussed in Point II (see *supra* at p. 36), in authorizing Guam to establish a system of local courts, Congress specifically provided that it first would have to enact legislation regulating the relationship between the local courts of Guam and the Federal judicial system. Act of October 21, 1976, Pub. L. No. 94-584, section 2(b)(7), 90 Stat. 2899. Indeed, the Guam Constitution must itself be ratified by the Congress before it can become effective. *Id.*, section 5. This is but one more example of the supervision which Congress has consistently exercised over territorial judiciaries in order to ensure territorial litigants the continuing constitutionally protected right to appellate review in Article III courts as their own local judiciaries develop. It seems clear that the 81st Congress could not have intended to deprive the citizens of Guam of this right by permitting Guam to bar Article III review to virtually all of its litigants except

those who are lucky enough to be plaintiffs under federal question jurisdiction in the District Court.

Petitioners concede that their interpretation of section 22 and the validity of Guam's Court Reorganization Act create a "void" in the territorial scheme that Congress would have to fill with subsequent legislation. Petitioners' Brief at 16. Respondent submits that such an interpretation of a congressional enactment is impermissible when an alternative interpretation itself fills the "void." It should not be assumed that Congress knowingly left a gap in the statutory scheme and left the problem of Article III review to be resolved by subsequent legislation.

Respondent's interpretation of section 22 does not create any such "void." Nor does it present the constitutional problems inherent in Petitioners' position. It is a recognized tenent of statutory construction that statutes should be interpreted to avoid constitutionally questionable results. *See, e.g., United States* v. *Rumely,* 345 U.S. 41, 45 (1953); *Cromwell* v. *Benson,* 285 U.S. 22, 62 (1932). This Court should not read section 22 of the Organic Act to permit the establishment of insulated local appellate courts in the absence of a clear expression of such a congressional intent in the language of the statute or in its legislative history. *See, e.g., Ozawa* v. *United States,* 260 U.S. 178, 194 (1922). Respondent's interpretation of section 22 poses none of these dangers or voids, but rather is consistent with the overall theme of the territorial scheme, and with the rights of United States citizens generally to have access to judicial review by a court of the United States established under Article III of the United States Constitution.

Conclusion

For the reasons stated, it is respectfully submitted that the judgment of the Court below should be affirmed.

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